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7 Attorneys for Defendant and Counter-claimant
 8 MACRO PLASTICS, INC.

9 UNITED STATES DISTRICT COURT
 10 EASTERN DISTRICT OF CALIFORNIA

11 US INTERLOC MATTING, INC., a California
 12 corporation,

13 Plaintiff,

14 vs.

15 MACRO PLASTICS, INC., a California
 16 corporation; and DOES 1 through 10, inclusive,

17 Defendants.

18 MACRO PLASTICS, INC., a California
 19 corporation,

20 Counter-claimant,

21 vs.

22 US INTERLOC MATTING, INC., a California
 23 corporation,

24 Counter-defendant.

Case No.: 2:17 -cv- 0733-JAM-DB

**STIPULATION AND ORDER FOR
 LEAVE OF COURT TO MACRO
 PLASTICS, INC. TO FILE FIRST
 AMENDED COUNTERCLAIM AND TO
 US INTERLOC MATTING, INC. TO
 FILE FIRST AMENDED ANSWER
 THERETO**

25
 26 To the Honorable Court and to counsel and all parties of record herein:
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1 WHEREAS on February 22, 2016 Plaintiff US Interloc Matting, Inc. (“USI”) filed its
2 California State Court Complaint for Breach of the Implied Covenant of Good Faith & Fair
3 Dealing (causes of action 1 through 3), Common Count: Goods and Services Rendered,
4 *Quantum Meruit*, Violation of California’s Unfair Trade Practices Act, and Declaratory Relief.
5 Plaintiff’s Complaint was filed in the Superior Court of the State of California, County of
6 Solano, case number FCS 048429 (herein the “Complaint”); and

7 WHEREAS on or about April 3, 2017 Macro Plastics, Inc. (herein “MPI”) filed its
8 Notice of Removal of Civil Action, removing Solano County Superior Court action from state
9 court to the United States District Court, Eastern District of California; and

10 WHEREAS on or about April 7, 2017, MPI filed its Answer and Affirmative Defenses
11 to the Complaint (herein “Answer to Complaint”) and concurrently also, as a Counterclaimant,
12 filed its Counterclaim against USI for Trademark Infringement, Service Mark Infringement,
13 Copyright Infringement, Lanham Act Misrepresentations, Breach of Contract, Unfair
14 Competition and Declaratory Relief (herein “Counterclaim”); and

15 WHEREAS on or about April 28, 2017 USI filed its Answer to Macro Plastic, Inc.’s
16 Counterclaim (herein “Answer to Counterclaim”); and

17 WHEREAS subsequent to the filing of MPI’s Counterclaim it was determined that a
18 claim MPI wishes to assert was inadvertently omitted, and a new proposed First Amended
19 Counterclaim was then drafted (herein “First Amended Counterclaim”). The proposed First
20 Amended Counterclaim adds an additional claim of breach of contract to its Fifth Cause of
21 Action, and a related count (8th Cause of Action) for Open Book Account. A true and correct
22 copy of the marked and edited version of the proposed First Amended Counterclaim is attached
23 hereto as Exhibit 1. A full, complete and unmarked version of the First Amended Counterclaim,
24 with all supporting exhibits to it, is attached hereto as Exhibit 2; and

25 WHEREAS the parties, by and through their counsel of record, have in good faith meet
26 and conferred about the filing of the proposed First Amended Counterclaim, and to allow
27 Counter-defendant USI the ability to file an Answer to the First Amended Counterclaim (herein
28 “Answer to the First Amended Counterclaim”).

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3 **WHEREFORE**, it is hereby stipulated by all parties herein by and through their
4 respective counsel of record that:

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6 1. The proposed amendments arise out of the same transactions and are part of the same
7 subject matter alleged in the Complaint;

8 2. The proposed amendments do not require adding another party over whom the court
9 cannot acquire jurisdiction;

10 3. Rule 15 of the Federal Rules of Civil Procedure permit parties to amend their
11 pleading with the opposing party's consent or with leave of court;

12 4. Rule 15 further provides that the court should freely provide leave when justice so
13 requires.

14 5. Justice supports granting MPI leave to file its First Amended Counterclaim, a true
15 and correct copy of which is attached as Exhibit 1.

16 6. Counter defendant USI should be given 20 days after filing and service of the First
17 Amended Counterclaim to file its Answer thereto.

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19 IT IS SO STIPULATED.

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21 DATED: August 21, 2017

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DIEPENBROCK ELKIN GLEASON LLP

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24

By /s/ David A. Diepenbrock
David A. Diepenbrock

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Attorneys for Plaintiff and Counter defendant,
U.S. INTERLOC MATTING, INC.

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1 DATED: August 21, 2017

2 THE BURTON LAW FIRM

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4 By /s/ John S. Knowlton
5 John S. Knowlton

6 Attorneys for Defendant and Counterclaimant,
7 MACRO PLASTICS, INC.

8 **ORDER**

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10 The Court having reviewed the foregoing Stipulation by and among the parties, and
11 good cause appearing therefore:

12 **IT IS HEREBY ORDERED** that Counterclaimant Macro Plastics, Inc. is granted leave
13 of court to file its First Amended Counterclaim, a copy of which is attached hereto as Exhibit 1.

14 **IT IS FURTHER ORDERED** that Counter defendant U.S. Interloc Matting, Inc. shall
15 file its Answer to the First Amended Counterclaim within 20 days after the First Amended
16 Counterclaim is filed.

17 **IT IS FURTHER ORDERED** that the First Amended Counterclaim is deemed filed as
18 of the date this Order is transmitted to the parties via the CM/ECF system.

19 IT IS SO ORDERED.

20 Dated: 8/22/2017

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22 /s/ John A. Mendez

23 Hon. John A. Mendez
24 United States District Court Judge